

Premium Fine Coal, Inc. and United Mine Workers of America, Petitioner.

Fiderak Trucking, Inc. and United Mine Workers of America, Petitioner. Cases 4-RC-14795 and 4-RC-14824

June 24, 1982

DECISION AND DIRECTION

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

Pursuant to Stipulations for Certification Upon Consent Election executed by the parties and approved by the Acting Regional Director for Region 4 of the National Labor Relations Board, elections by secret ballot were conducted in the above-entitled cases on September 14, 1981, under the direction and supervision of the Regional Director. Upon conclusion of the elections, tallies of ballots were furnished to the parties in accordance with the Board's Rules and Regulations, Series 8, as amended.

The tally of ballots in Case 4-RC-14824 shows that, of approximately 9 eligible voters, 11 ballots were cast, of which 5 were cast for, and 4 were cast against, the Petitioner. There were two challenged ballots. The tally of ballots in Case 4-RC-14795 shows that, of approximately two eligible voters, two ballots were cast, one for and one against the Petitioner. There were nine challenged ballots. No timely objections to the election were filed. Acting pursuant to Section 102.69(c) of the Board's Rules and Regulations, Series 8, as amended, the Acting Regional Director caused an investigation on the challenged ballots in both cases to be conducted and, thereafter, on October 13, 1981, issued and served on the parties his Report on Challenged Ballots. In his report, the Acting Regional Director recommended that the resolution of all of the challenged ballots be considered in conjunction with pending unfair labor practice proceedings in Cases 4-CA-12349 and 4-CA-12350, upon which a consolidated complaint and notice of hearing issued on October 9, 1981.¹ The Petitioner filed timely exceptions to the Acting Regional Director's report asserting that the Acting Regional Director had erroneously failed to apply *International Ladies' Garment Workers' Union*, 137 NLRB 1681 (1962), regarding the two challenged ballots in Case 4-RC-14824. No other exceptions were filed. Thereafter, the Petitioner also filed with the Regional Director a "Motion to Reconsider Report and Reconsideration on Challenged Ballots."

¹ The consolidated complaint alleges, in pertinent part, that the two challenged voters in Case 4-RC-14824, Paul Blasko and George Miller, were terminated in violation of Sec. 8(a)(1) and (3) of the Act.

On January 8, 1982, the Acting Regional Director issued a Supplemental Report on Challenged Ballots, withdrawing his previous report as it applied to the challenged ballots of Paul Blasko and George Miller in Case 4-RC-14824. In his supplemental report, the Acting Regional Director found that Blasko and Miller, alleged discriminatees in the pending unfair labor practice proceeding, had voluntarily submitted signed affidavits in which they each waived their right to a secret ballot and requested therein that the Regional Director open and count their ballots in order to resolve the election. The Acting Regional Director concluded that the ballots of Blasko and Miller should be opened and counted and that a certification of representative be issued if one or both of the ballots has been cast for the Petitioner. *International Ladies' Garment Workers' Union*, *supra*. Thereafter, the Employer filed timely exceptions to the Acting Regional Director's supplemental report.²

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the record in light of the exceptions and briefs and hereby adopts the Acting Regional Director's findings and recommendations,³ as modified herein.

We agree with the Acting Regional Director that the application of *International Ladies' Garment Workers' Union*, *supra*, wherein the Board directed the opening of two determinative challenged ballots cast by individuals who were alleged discriminatees in a pending unfair labor practice proceeding, is appropriate and proper under the circumstances of Case 4-RC-14824. In so finding, we rely on the fact that all the challenged ballots in the unit at issue therein were cast solely by individuals who are alleged discriminatees in a pending unfair labor practice proceeding and that these individuals have clearly and voluntarily waived their right to the secrecy of their ballots and requested that their ballots be opened. In these narrow circumstances, the application of *International Ladies' Garment Workers' Union*, *supra*, is appropriate in seeking to resolve expeditiously the question concerning representation which has been raised. Cf. *Monarch Federal Savings and Loan Association*, 236

² In view of the Acting Regional Director's supplemental report withdrawing his previous recommendation in Case 4-RC-14824, to the extent that it applied to the ballots of Blasko and Miller, we find the Petitioner's related exceptions moot.

³ In the absence of exceptions, we adopt, *pro forma*, the Acting Regional Director's findings and recommendations in Case 4-RC-14795 that the challenge to the ballot of Francis C. Arner be sustained and that the remaining eight challenged ballots be resolved in the consolidated hearing with Cases 4-CA-12349 and 4-CA-12350.

NLRB 874 (1978); *El Fenix Corporation*, 234 NLRB 1212 (1978). However, inasmuch as it is conceivable that only one of the two individuals at issue herein may be found eligible pursuant to the unfair labor practice proceeding, thereby possibly resulting in a 5-5 tally, we hereby modify the Acting Regional Director's recommendation to reflect that a Certification of Representative shall issue only if both ballots have been cast for the Petitioner.

DIRECTION

It is hereby directed that Case 4-RC-14824 be, and it hereby is, remanded to the Regional Direc-

tor for Region 4 for the purpose of opening and counting the ballots of Paul Blasko and George Miller. If both of these ballots have been cast for the Petitioner, the Regional Director shall certify the Petitioner in Case 4-RC-14824. If, however, one or both of these ballots has been cast against the Petitioner, the issue of the eligibility, in Case 4-RC-14824, of Blasko and Miller, along with the issue of eligibility, in Case 4-RC-14795, of Rudolph Abel, Anthony M. Dirzulaitis, George B. Fredericks, Anthony Kotula, Jr., Murland Miller, John Orsulak, Chris Zapotoczny, and Paul Zapotoczny, shall be consolidated for hearing with Cases 4-CA-12349 and 4-CA-12350.